



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/827,390

04/19/2004

Lowell L. Wood JR.

0803-004-001D-000000

3132

80118 7590 06/05/2009

Constellation Law Group, PLLC

P.O. Box 220

Tracyton, WA 98393

EXAMINER

MEDWAY, SCOTT J

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

06/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/827,390	Applicant(s) WOOD, LOWELL L.	
	Examiner SCOTT MEDWAY	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-99 is/are pending in the application.
- 4a) Of the above claim(s) 42-99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date | 6) <input type="checkbox"/> Other: _____ |

05/14/2009, 02/27/2009, 01/23/2009, 12/30/2008, 10/13/2008, 07/09/2008, 04/23/200

8.

DETAILED ACTION

This is the second Office Action based on the 10/827390 application filed 04/19/2004. Examiner acknowledges the reply filed 03/06/2008.

Claims 1-41 are currently pending and are considered below. Claim 1 has been amended.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9, 17-22, 28, 30 and 33-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Lebel et al (U.S. Pub. 2002/0065509, hereinafter “Lebel”).

Regarding claim 1, Lebel discloses a system comprising a body portion (16), an extending part with a proximal and distal end wherein at least the distal end (e.g. 18) is capable of being inserted into an animal; a receiving body and a control circuit (para [0140]). Regarding claims 9, 17-22, 28, 30 and 33-41, Lebel discloses the following: a pump (see Abstract); a pressure sensor (para [0115]); a wireless interface and data transmitter and controller (para [0155]); a drug source (para [0060]); a plurality of drugs (para [0414]); a device for guiding liquid flow (see Fig. 1B); a fluid dispenser (para [0021]); a processor comprising stored software (para [0140]); and the full disclosure of Lebel suggests the disclosed device being fully capable of implantation in a human

Art Unit: 3763

animal, for treating a physiological condition, for placement in a circulatory system, for monitoring a response, and which comprises a medicinal agent (para [0060]).

3. Claims 1, 9, 11-17, 21, 22, 28, 30, and 32-40 are rejected under 35

U.S.C. 102(b) as being anticipated by Labbe et al (U.S. Pat. 4,944,659, hereinafter “Labbe”).

Regarding claim 1, Labbe discloses a system comprising a body portion, an extending part with a proximal and distal end, the distal end capable of being inserted into an animal; a receiving body; and a control circuit (see Abstract). Regarding claims 9, 11-17, 21, 22, 28, 30, 32-40, Labbe discloses a pump (see Abstract); a polymer of a piezoelectric element fully capable of converting a first form of electrical energy into a second form of mechanical energy operable for moving fluid; a sensor (see Fig. 4); a source of a plurality of drugs; a device for guiding fluid flow (see Fig. 3); a fluid dispenser (see Abstract); and processor (see Fig. 4); and the full disclosure of Labbe suggests the disclosed device being fully capable of implantation in a human animal, for treating a physiological condition, for placement in a circulatory system, for monitoring a response, and which comprises a medicinal agent.

4. Claims 1, 10, 23-25, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Davison et al (U.S. Pat. 6,296,638 B1, hereinafter “Davison”).

Regarding claim 1, Davison discloses a system comprising a body portion, an extending part with a proximal and distal end, the distal end capable of being inserted

Art Unit: 3763

into an animal; a receiving body; and a control circuit (col. 3, lines 5-60). Regarding claims 10, 23-25, 27 and 29, Davison discloses a motor; and functional tool with a positioner (100) for ablation (see Abstract) which ablates by carrying a source of electrical charge at a distal end (104).

5. Claims 1 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Adair (U.S. Pat. 6,086,528).

Regarding claim 1, Adair discloses a system comprising a body portion, an extending part with a proximal and distal end, the distal end capable of being inserted into an animal; a receiving body; and a control circuit (see Figs. 1-6). Regarding claim 31, Adair discloses the system comprising a stent (col. 2, lines 25-30).

6. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Stack et al (U.S. Pat. 4,905,689, hereinafter "Stack").

Regarding claim 1, Stack discloses a system comprising a body portion, an extending part with a proximal and distal end, the distal end capable of being inserted into an animal; a receiving body; and a control circuit (see Figs. 1, 2 and 4). Regarding claims 2-7, Stack discloses the extending part comprising a plurality of sliding pieces (see Fig. 4), where the pieces comprise a decreasing size capable of traveling the interior of a blood vessel, with a hollow portion in the pieces, and where the size of the diameter of a distal sliding piece comprises at least a twofold decrease in diameter of each successive distal sliding piece (see Fig. 4).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davison et al (U.S. Pat. 6,296,638 B1) in view of Majewski et al (U.S. Pat. 6,643,538 B1) .**

Regarding claim 26, it is noted that Davison discloses the claimed invention except for a second control circuit. Majewski discloses a probe in the analogous art to Davison, comprising a plurality of control circuits including a first and a second control circuit, where the second control circuit is suitable for guiding a tool. It would have been obvious to one of ordinary skill in the art at the time of the invention to supply a second circuit suggested by Majewski to the device of Davison so as to independently control

Art Unit: 3763

both the operation and the movement of the system for more precise and accurate maneuvering through a blood vessel.

Response to Arguments

10. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT MEDWAY whose telephone number is (571) 270-3656. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/827,390

Page 7

Art Unit: 3763

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott J. Medway/
Examiner, AU 3763
06/04/2009

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763